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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/960,191	09/21/2001	John F. Stevens	ADV12 P301A	4580

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EXAMINER

PRATT, HELEN F

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 04/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/960,191

Applicant(s)

STEVENS ET AL.

Examiner

Helen F. Pratt

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 50 and 51 is/are allowed.
- 6) ☒ Claim(s) 1,2,4-8,10-22,24-45,48 and 49 is/are rejected.
- 7) ☒ Claim(s) 3,9,23,46 and 47 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4-8, 10-16, 19-33, 35-36, 49 are rejected under 35 U.S.C. 102(b) as being anticipated by Reddy (5,626,893).

The claims are rejected for the reasons of record cited in the last office action and for these further reasons. The above claims have been amended to require processing steps in composition claims, which are not given weight.

The limitations of claims 10-16, 19-33 have been discussed above and are obvious for those reasons. No weight is given to the limitation of “applied to a potato substrate” (claim 24) which is a process limitation. Also, no weight is given to the processing limitations of claims 25-36.

Claims 12, 13-14, 16, 28, 29, 30-34, 38-45, 48, 49 are rejected under 35 U.S.C. 102(a) as being anticipated by Horn et al. (6,159,521).

Horn et al. disclose a coating for potatoes containing rice flour which is 80 mesh in amounts more than 56% which are partially cooked and frozen as in claims 12, 13, 14, 16, 28, 29, 30-34, 38, 39, 41, 42, 43, 44 (col. 1, lines 9-15, col. 5, lines 9-31 and col. 9, lines 5-15). The product is seen to be free from reticulation as the process is the same. Dextrins as in claim 44 are disclosed in col. 9, lines 5-15. The further

limitations of the various sizes are seen to have been shown by the 80 mesh size.

Claim 48 further requires reconstituting the product which is disclosed as "finished frying" the product (col. 8, lines 41-44).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Horn et al. (6,159,521).

Claim 15 further requires using rice flour having particles large than 80 mesh and claim 17 requires the use of rice flour of 120 mesh size and claim 18 further requires that 5% of the rice is a 120 mesh size. However, the reference discloses that other flours and starches could be optionally used (col. 6, lines 55-59). These different flours most likely have larger mesh sizes. No patentable distinction is seen in using 5% of the rice in this size, absent anything new or unexpected, as the rice seems to be a filler. Therefore, it would have been obvious to use a small amount of rice of a larger size in the composition and to use rice flour in a known size as disclosed in claim 17 which absent a showing to the contrary would be about 120 mesh.

Claims 3, 9, 23, 37, 46, 47, are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 50 and 51 are allowable.

ARGUMENTS

Applicant's arguments filed 2-17-04 have been fully considered but they are not persuasive. Applicants argue that the anti-caking product of the Reddy reference no longer coats the cheese when the cheese is heated as in a pizza product, but melts into the cheese. However, no weight is given to the process limitations in a composition claim, and the limitations of the composition claim have been disclosed. As to the process a new reference has been added to Horn et al.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 703-308-1978. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HP 4-7-04

H. Pratt
HELEN PRATT
PRIMARY EXAMINER